



FH  
[REDACTED]

**STATE OF WISCONSIN  
Division of Hearings and Appeals**

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

FOO/159437

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**PRELIMINARY RECITALS**

Pursuant to a petition filed July 30, 2014, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Milwaukee Enrollment Services in regard to FoodShare benefits (FS), a hearing was held on August 29, 2014, at Milwaukee, Wisconsin.

The issue for determination is whether the agency correctly denied Petitioner's application for replacement FS benefits as untimely when Petitioner applied within ten days of the power outage, but failed to provide a specific amount of food lost on her application, but later provided the amount of her household loss within the statutory time period.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

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Respondent:

Department of Health Services  
1 West Wilson Street, Room 651  
Madison, Wisconsin 53703

By: Jose Silvestre

Milwaukee Enrollment Services  
1220 W Vliet St, Room 106  
Milwaukee, WI 53205

**ADMINISTRATIVE LAW JUDGE:**

Corinne Balter

Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. Petitioner lost power for 43 hours from June 30, 2014 to July 2, 2014.

3. Petitioner lost food valued at \$600 during this power outage.
4. Petitioner applied for replacement FS on July 9, 2014. Petitioner provided verification of the power outage, but did not specify the amount of food lost during the power outage. On July 18, 2014 Petitioner filled out another request for replacement FS benefits. She dated that request July 9, 2014, writing 2<sup>nd</sup> request, just added \$600.
5. The agency denied Petitioner's application for replacement FS as untimely indicating that her application was not fully completed until July 21, 2014.

### **DISCUSSION**

Food purchased with FoodShare benefits and destroyed in a household misfortune can be replaced up to the actual amount destroyed, but not more than the monthly allotment issued for that month, whichever is less. See, *FoodShare Wisconsin Handbook* § 7.1.1.5; 7 C.F.R. § 274.6(a)(3). The household must report the loss within 10 days, and file a request for replacement FS with the Department's agent. *FoodShare Wisconsin Handbook* § 7.1.1.5. A household misfortune includes, but is not limited to, a disaster, fire or flood, or like event causing destruction of food. 7 C.F.R. § 274.6(f)(2). Prior to issuing a replacement, the State agency shall obtain from a member of the household a signed statement attesting to the household's loss. 7 C.F.R. § 274.6(a)(4)(i). If the signed statement or affidavit is not received by the State agency within 10 days of the date of report, no replacement shall be made. 7 C.F.R. § 274.6(a)(4)(i). If the 10th day falls on a weekend or holiday, and the statement is received the day after the weekend or holiday, the State agency shall consider the statement timely received. *Id.*

Here, Petitioner timely reported that she lost food due to a power outage. The power outage occurred June 30, 2014 to July 2, 2014. Petitioner reported the outage on July 9<sup>th</sup>, which is within the 10 day time limit. Petitioner further provided verification of the power outage from WE energies. Petitioner did not provide a statement attesting to the amount of the household loss until July 21, 2014. Petitioner had 10 days from her initial report date to provide that information to the agency unless the tenth day falls on a weekend or holiday, and then Petitioner would have had until the following Monday. In this case 10 days from July 9 is July 19, which is a Saturday. July 21 is the following Monday. Therefore Petitioner's application and report of her household loss are timely under the federal regulations.

Treating Petitioner's July 21, 2014 statement as a separate application would be putting form over substance. The July 21 application contained the exact same information as the July 9 application. It was the same power outage with the same verification. The only difference was that Petitioner included the amount of the household loss on July 21. Under the federal regulations Petitioner had until July 21, 2014 to provide that information. Therefore her application and the information in her application were timely.

Petitioner indicated at the hearing and on her application that she lost \$600 worth of food that she had in deep freezers. Petitioner testified that she had six children in her home. The agency questioned Petitioner about the number of children in her home because she only has five children listed as being in her household on her FS case. Petitioner stated that the sixth child is not "in the system," and therefore she does not have that child listed on her FS case. The agency correctly pointed out that regardless of whether or not that child is "in the system," that child should be included in Petitioner's FS household if she makes and prepares meals for that child. Nonetheless Petitioner was adamant that she lost \$600 worth of food from a deep freezer. She reported that she bought that food during other months, and the agency did not present evidence to refute Petitioner's statements. Petitioner is entitled to replacement FS benefits up to the amount of food lost or her monthly FS allotment, whichever is less. Petitioner receives just over \$600 in monthly FS benefits. Therefore the \$600 worth of food lost is actually less.

**CONCLUSIONS OF LAW**

Petitioner timely filed her application for replacement FS benefits and timely reported \$600 as the amount of her household food loss.

**THEREFORE, it is**

**ORDERED**

That this case is remanded back to the agency to provide Petitioner replacement FS benefits in amount of \$600 within 10 days of this decision.

**REQUEST FOR A REHEARING**

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

**APPEAL TO COURT**

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Room 651, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,  
Wisconsin, this 3rd day of September, 2014

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\sCorinne Balter  
Administrative Law Judge  
Division of Hearings and Appeals





**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

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The preceding decision was sent to the following parties on September 3, 2014.

Milwaukee Enrollment Services  
Division of Health Care Access and Accountability